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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

IN RE:

CASE NO. 17-60595-rbk

KIMBERLY KAY DURAN, AKA KIM DURAN
DBA HAIR BY KIM, DEBTOR AND RICARDO
J. DURAN, CO-DEBTOR,
Debtor(s).

CHAPTER 13

U.S. BANK TRUST, N.A., AS TRUSTEE FOR
LSF9 MASTER PARTICIPATION TRUST BY
CALIBER HOME LOANS, INC., AS ITS
ATTORNEY IN FACT,

Movant,

vs.

KIMBERLY KAY DURAN, AKA KIM DURAN
DBA HAIR BY KIM, DEBTOR AND RICARDO
J. DURAN, CO-DEBTOR, AND G. RAY
HENDREN, CHAPTER 13 TRUSTEE
Respondents.

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO § 362(d)(1) AND
CO-DEBTOR STAY OF §1301(a) AGAINST 8901 SPEARHEAD COVE, AUSTIN, TX 78717,
AND WAIVER OF § 362(e)'s 30 DAY HEARING REQUIREMENT**

TO CREDITORS AND PARTIES-IN-INTEREST:

THIS PLEADING REQUESTS RELIEF THAT MY BE ADVERSE TO YOUR INTERESTS.

**IF NO TIMELY RESPONSE IS FILED WITHIN 14 DAYS FROM THE DATE OF
SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A
HEARING BEING HELD.**

A TIMELY FILED RESPOSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE RONALD B. KING:

COMES NOW, U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust by Caliber Home Loans, Inc., as its attorney in fact (“Creditor” or “Movant”), a secured creditor in the above-entitled and numbered case. Movant respectfully requests that the Court enter an order terminating the automatic stay of § 362(a) as to Movant so that Movant may commence and continue acts necessary to enforce its security interest against the real property commonly known as 8901 Spearhead Cove, Austin, TX 78717.

This Motion for Relief is based upon the following memorandum of points and authorities, the Affidavit of Melba Arredondo, filed concurrently herewith, and the Exhibits attached hereto.

I.

INTRODUCTION

Movant respectfully requests that the Court grant it relief from the automatic stay pursuant to § 362(d)(1) and §1301(a) because the Debtors have failed to tender post-petition payments to Movant.

II.

JURISDICTION AND PARTIES

1. On July 31, 2017, Kimberly Kay Duran filed the instant Chapter 13 Petition as Case Number 17-60595-rbk.
2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157, 11 U.S.C. § 362.
3. This is a core proceeding under 28 U.S.C § 157(b)(2))G).

III.

STATEMENT OF FACTS

4. **The Secured Debt.** On or about January 7, 2004, Ricardo J. Duran and Kimberly K. Duran made and delivered a promissory note (“Note”) in the original principal amount of \$191,500.00. The Note is secured via a first priority deed of trust (“Deed of Trust”) by the Property commonly known as 8901 Spearhead Cove, Austin, TX 78717. (“Property”). True and correct copies of the Note and Deed of Trust are attached hereto as Exhibits “1” and “2,” respectively.
5. **The Assignment of the Deed of Trust** A true and correct copy of the Assignment is attached hereto as Exhibit “5.”

6. **The Default Under The Note.** The Note and Deed of Trust are post-petition due for the August 1, 2017 payment. As a result of the default, Movant desires to foreclose its security interest in the Property. The total delinquency under the Note is set forth in detail in Exhibit “4” to the Motion.

7. **The Debtor's Interest In The Property.** Kimberly Kay Duran (“Debtor”) and Ricardo J. Duran (“Co-Debtor”) are the owners of record of the Property.

8. **The Post-Petition Delinquency.** The Debtors have failed to make post-petition payments that have come due. As of October 3, 2017 the total post-petition delinquency is set forth below:

3	(08/01/2017 - 10/01/2017)	Payments due at	\$1,765.79	\$5,297.37
		Post-petition		\$0.00
		suspense		
		Total:		\$5,297.37

A post-petition ledger reflecting all post-petition payments that have come due since the filing of the petition as well as all post-petition payments received is attached hereto as Exhibit “4.”

9. **The Total Indebtedness Under The Note.** The total indebtedness owed to Movant, exclusive of attorneys’ fees, is as follows:

Principal Balance		\$170,681.96
Interest Accrued to	10/03/2017	\$40,165.19
Escrow Advance		\$35,246.42
Late Charges		\$139.59
Other Fees Due		\$5,021.84
Suspense Balance		\$-517.36
Grand Total		\$250,737.64

10. **The Total Liens On The Property.** The Property is encumbered by the following liens:

<u>SECURED CREDITOR</u>	<u>LIEN AMOUNT</u>
1. Movant	\$250,737.64

TOTAL: \$250737.64

11. **The Value Of The Property.** The Property has a fair market value of only \$374,923.00 per the Williamson County Appraisal District.” A true and correct copy of the County Appraisal is attached as Exhibit “3.”

IV.

TERMINATION OF THE CO-DEBTOR STAY.

Bankruptcy Code § 1301 provides for the termination for the co-debtor stay. Ricardo J. Duran is a co-debtor because that person is liable under the Note and Deed of Trust. Movant requests that the co-debtor stay be terminated as well.

V.

**MOVANT SHOULD BE GRANTED RELIEF FROM STAY BASED UPON THE DEBTOR'S
FAILURE TO TENDER POST-PETITION PAYMENTS.**

Movant is entitled to relief from the automatic stay for “cause,” pursuant to § 362(d)(1), based upon the Debtors failure to tender post-petition payments to Movant, as required by § 1322(b)(5). See Paragraph III(8) above and the Affidavit of Melba Arredondo, filed concurrently herewith.

VI.

CONCLUSION.

Based upon the foregoing, Movant respectfully requests that the Court enter an order terminating the automatic stay pursuant to § 362(d)(1) and co-debtor stay of §1301 including a waiver of the 14-day stay provided by Federal Rule of Bankruptcy Procedure 4001(a)(3), so as to allow Movant to enforce its rights and remedies under its Note and Deed of Trust.

Dated: October 19, 2017

Respectfully Submitted,

MALCOLM ♦ CISNEROS, A Law Corporation

By: /s/ Nathan F. Smith

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